

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1051 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VIRJIBHAI PALABHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MR SATYEN B RAWAL for Petitioner

Mrs. B.R. Gajjar, A.P.P. for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 23/03/98

ORAL JUDGEMENT

Heard learned Advocate Shri S.B.Raval appearing
for the petitioner.

Rule. Learned A.P.P. Mrs. B.R.Gajjar waives
service of rule on behalf of the respondents nos.1 to 3.

The petitioner has challenged the legality and validity of the order passed by the Deputy Secretary, Home Department dated 7-5-1997 rejecting the Revision Application of the petitioner.

The present petitioner was holding a licence to possess a pistol of 25 Bor issued vide no.SNR III 300/74 dated 9-4-1992 for the entire territory of India. It was alleged that on 26-3-1991, the petitioner has fired said pistol in the air around 12.30 noon near his residential premises during the incident and thereby an offence was registered against the petitioner under Sections 307 and 34 of the Indian Penal Code and under Section 25(1)(a) of the Arms Act, 1959; that said offence was registered vide C.R.No.43/'91 at Joravarnagar Police Station, District Surendranagar; that thereafter the District Magistrate-respondent no.2 issued show cause notice dated 5-9-1991 to the petitioner as to why said licence to hold arms should not be cancelled and fixed the hearing on 5/9th September, 1991; that said notice could not be served to the petitioner before the due date and thereby time was extended to 27th June, 1992; that the respondent no.2 received a written reply from the petitioner dated 23rd January, 1992 but the petitioner did not remain present before the respondent no.2 during the hearing. The respondent no.2 considered the written reply of the petitioner and rejected all the contentions raised therein and also cancelled the licence of the petitioner to possess pistol as described vide said order dated 22-4-1992.

Being aggrieved and dissatisfied by the above said order passed by the respondent no.2, the petitioner preferred Revision Application dated 30-5-1992 before the Deputy Secretary, Home Department, State of Gujarat; that said Revision Application was heard and decided by the respondent no.3. Vide impugned order dated 7th May, 1997, the respondent no.3 has rejected the Revision Application of the present petitioner.

Shri S.B. Raval, learned Advocate appearing before me for the petitioner has taken me through the order of learned Additional Sessions Judge, Surendranagar passed in the matter of Sessions Case no.73/'91 which is produced on record vide pages 21 to 26 of the compilation; that according to the said order the present petitioner is acquitted of all charges made against them in the criminal case for the offence made punishable under Section 307 and 34 and also under the Arms Act; that learned Additional Sessions Judge directed to entrust the Muddammal pistol with the learned Chief

Judicial Magistrate, Surendrnagar.

Mr. Raval has invited my attention to the provisions of Section 17 of the Arms Act, 1959; that proviso to Section 17(7) is as under:

"17. Variation, suspension and revocation of licence, _.....

.....
(7) A court convicting the holder of a licence of any offence under this Act or the rules made thereunder may also suspend or revoke the licence:

Provided that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void."

That according to proviso to Section 17(7) of the Act, the revocation of licence issued to the present petitioner has become void, and thereby, the petitioner has become eligible to apply and hold a valid licence.

Learned A.P.P. Mrs. B.R. Gajjar has failed to point out any provision contrary to the above stated provisions of the Arms Act, however, she has vehemently urged that the petitioner ought to have produced the judgment and order of the learned Additional Sessions Judge, Surendranagar whereby he is acquitted of the offence under Section 307 and 34 of the Indian Penal and also under the Arms Act as well as the Bombay Police Act; that the petitioner having failed to produce the said judgment before the Competent Authority, the petitioner cannot condemn the respondent no.3 for not passing a reasonable and lawful order.

It appears from the record that the respondent no.3 has intimated the petitioner about the dates fixed before the hearing from time to time and has ultimately passed the order of 7-5-1997 while the acquittal order of the petitioner is passed by the learned Additional Sessions Judge on 20th October, 1995 which is prior to rejection of Revision Application by the respondent no.3 dated 7-5-1997. The learned A.P.P. has rightly pointed out that the present petitioner could have produced the certified copy of the order of the learned Additional Sessions Judge before the respondent no.3 for just and proper decision of the Revision. As against that, learned Advocate Shri Raval appearing for the petitioner has submitted that as per grievance made by the petitioner in the petition, the respondent no.3 did not intimate the petitioner about the date fixed for hearing

of the said Revision Application, and thereby, the petitioner could not remain present before the respondent no.3 and could not produce the certified copy of the order of the learned Additional Sessions Judge, Surendranagar passed in Sessions Case npo.73/91. However on account of said order as per provisions of law, the initial order of revocation of licence has become void, and thereby there is no obstacle in the way of the present petitioner to claim licence. The petitioner can apply for a fresh licence only if the impugned order is set aside. It is true that unless the impugned order dated 7th May, 1997 is set aside and quashed, the application of the petitioner for issuance of fresh licence under the provisions of the Arms Act cannot be processed. Hence, to that extent the present petition has to be allowed.

On the basis of the above stated discussion, Special Criminal Application no.1051 of 1997 is allowed. The order passed by the respondent no.2 bearing no.MJS-2-V-2197-91 dated 22-4-1992 (as per Annexure "C") and order passed by the respondent no.3 bearing no.HWD-2692-3504-M dated 7-5-97 are hereby set aside and quashed. The petitioner shall be entitled to apply for renewal of licence issued to him vide no. SNR III 300/74 dated 9-4-1992 which was cancelled vide order dated 3-9-1991. Rule is made absolute accordingly. No order as to costs.

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